

Industrial development bonds for water pollution control facilities. A resolution by a political subdivision, not qualifying as a 'bond resolution,' that authorizes an agreement obligating the political subdivision to construct and operate water pollution control facilities for use by an industrial corporation and the issuance of bonds by the political subdivision to finance the construction of such facilities constitutes 'some other similar official action' within the meaning of section 1.103-8(a)(5)(iii) of the regulations.

The governing body of a political subdivision of a State adopted a resolution on January 4, 1974, authorizing (1) the execution of an agreement with an industrial corporation obligating the political subdivision to construct and operate water pollution control facilities as defined in section 1.103-8(g)(2) of the Income Tax Regulations for the use of the corporation, and (2) the issuance of bonds by the political subdivision to finance the construction of such facilities. The resolution does not qualify as a 'bond resolution' as that term is used in section 1.103-8(a)(5).

The political subdivision and the industrial corporation executed the agreement on January 25, 1974. Under the terms of the agreement, the political subdivision is committed to issue revenue bonds in a sufficient amount to finance the construction of the facilities. Neither the political subdivision nor the industrial corporation had commenced construction or acquisition of the water pollution control facilities at the time the agreement was executed. The construction was commenced after January 25, 1974, and was subsequently completed.

Held, the resolution of the political subdivision together with the agreement between the political subdivision and the industrial corporation constitute 'some other similar official action' and, thus, satisfy the requirement set forth in section 1.103-8(a)(5)(iii) of the regulations that, in the absence of a bond resolution, some other similar official action toward issuance of the obligations must be taken by the issuer of the obligations prior to the commencement of construction or acquisition of the facilities.

Compare Rev. Rul. 73-186, 1973-1 C.B. 48, which holds, in part, that the approval of the issuance of bonds by the electors of a political subdivision at a special election constitutes 'some other similar official action' toward the issuance of such bonds for purposes of satisfying the requirement of section 1.103-8(a)(5)(iii) of the regulations.

A political subdivision of a State issued industrial development bonds within the meaning of section 103(c)(2) of the Internal Revenue Code of 1954 in the amount of \$4,000,000 for the purpose of financing facilities for use by an industrial

corporation. The political subdivision elected to apply the provisions of section 103(c)(6)(D) to the bond issue in order that it would qualify as a \$5,000,000 exempt small issue. All of the stock of the industrial corporation is owned by a charitable foundation trust which is an organization described in section 501(c)(3) and exempt from tax under section 501(a).

The trust, the industrial corporation, and the facilities financed with the bond proceeds are located within the boundaries of the same incorporated municipality. None of the trust's assets have been or will be used in connection with the operations of the industrial corporation, and none of the capital expenditures by the trust have been or will be incurred with respect to the operations of the industrial corporation. The trust has not derived and will not derive any 'unrelated business taxable income' within the meaning of section 512 of the Code.

Held, although the trust and the industrial corporation are related persons within the meaning of section 267(b)(8) of the Code, none of the capital expenditures made by the trust with respect to its exempt activities in the incorporated municipality within three years before and after the date of the issuance of the bonds will be considered 'capital expenditures' within the meaning of section 103(c)(6)(D).